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OFFICE OF PETITIONS

In re Application of :
Harald Rohde : DECISION ON
Application No. 10/761,848 : PETITION
Filed: January 21, 2004 :
Attorney Docket No. 112740-912:

This is a decision on the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT," filed May 25, 2006.

The above-identified application became abandoned for failure to timely file a proper reply to the Restriction Requirement mailed September 20, 2005. The Office action set a one month shortened statutory period for reply, with extensions of time obtainable under 37 CFR 1.136(a). No reply having been received and no extension obtained, the application became abandoned effective October 21, 2005. A courtesy Notice of Abandonment was mailed on May 23, 2006.

In response, applicant timely filed the instant petition. Applicant submits that a response was timely filed on October 20, 2005 and was received by the Office on October 24, 2005. However, applicant acknowledges that the response as filed identified the wrong application number. In support thereof, applicant provided a copy of their itemized return postcard and a copy of the response as applicant maintains it was filed on October 24, 2005.

A review of the petition and of the record of the misidentified application confirms that the response as petitioner maintains it was filed on October 24, 2005 was, in fact, filed with the wrong application number. Further investigation reveals that the response with a date of receipt of October 24, 2005, and a certificate of mailing pursuant to 37 CFR § 1.8 dated October

20, 2005, was entered in the misidentified application. This has been corrected. The election filed October 24, 2005, has been "moved" from the electronic record of the incorrectly identified application to the record of the instant application. Moreover, given the certificate of mailing, the response is considered timely filing.

In view thereof, the notice of abandonment mailed May 23, 2006 is hereby **VACATED**, and the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

A fee for consideration of the petition pursuant to 37 CFR 1.137(a) was charged. This fee has been refunded to petitioner's Deposit Account, as authorized.

Technology Center AU 2883 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical staff to withdraw the holding of abandonment and for the examiner to consider the election timely filed October 24, 2005 (with a certificate of mailing dated October 20, 2005).

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a long horizontal line extending to the right.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions